

**DOCKET FILE COPY ORIGINAL**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of: )  
 )  
Digital Audio Broadcasting Systems )  
And Their Impact On the Terrestrial Radio )  
Broadcast Service. )

MM Docket No. 99-325

JAN 24 2000  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

**COMMENTS OF  
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.  
AND CERTAIN CHANNEL 6 LICENSEES**

January 24, 2000

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**COMMENTS OF JOINT BROADCASTERS**

The undersigned Channel 6 stations<sup>1</sup> and the Association for Maximum Service Television, Inc. ("MSTV")<sup>2</sup> (together, "Joint Broadcasters") hereby comment on the Commission's Notice of Proposed Rule Making in the above-captioned docket, released November 1, 1999 (the "*Notice*").<sup>3</sup> In the *Notice*, the Commission proposes two models for implementing digital audio broadcasting ("DAB"). The first, and the one to which the Commission devotes considerable attention, is the In-Band, On-Channel ("IBOC") model, whereby simultaneous broadcast of analog and digital signals in the present AM and FM bands would occur without disrupting the public's existing analog service. The second, covered in only a few paragraphs in the 28-page *Notice*, is the new spectrum model, in which the Commission would take the six MHz of spectrum currently assigned to television broadcast Channel 6 and reallocate it for DAB. Joint Broadcasters oppose the second option, which would have a devastating effect on the public's free, over-the-air television service and, unlike the IBOC

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<sup>1</sup> The undersigned Channel 6 stations include 24 stations with analog or digital Channel 6 assignments.

<sup>2</sup> MSTV represents nearly 400 local television stations on technical issues relating to analog and digital television services. It played a central role in developing the methodology for allotting and assigning digital television ("DTV") channels.

model, would strand many of the public's radio services, leaving them without a transition path to digital.

## **I. SUMMARY**

The proposal to reallocate Channel 6 spectrum for DAB would have real costs in the form of substantial injury to the public's television broadcast service – costs that far outweigh the benefits that might be gained by some radio broadcasters receiving DAB spectrum in the Channel 6 band. Another set of costs is that the many radio broadcasters who could not be accommodated in the six MHz of Channel 6 spectrum would become second-class citizens compared to those that would gain access to the new DAB spectrum. On the other hand, by providing each existing radio broadcaster with paired digital spectrum for DAB operations, IBOC would allow all existing radio stations to upgrade to the digital medium, and at no cost to other entities and the services they provide to the public.

As television broadcasters that currently operate analog or digital stations on Channel 6, Joint Broadcasters have a strong interest in preserving Channel 6 spectrum for the public's television broadcast service. Channel 6 stations currently play an important role in providing analog service to the American public and will continue to be significant as broadcasters make the transition from analog to digital over the next several years. Channel 6 is necessary to existing analog television service, to the transition to digital television, and, once the transition to digital is completed, to the public's new digital services. Joint Broadcasters urge the

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<sup>3</sup> See *In re Digital Audio Broadcasting Systems And Their Impact On The Terrestrial Radio Broadcast Service*, Notice of Proposed Rule Making (MM Docket No. 99-325) (rel. Nov. 1, 1999).

Commission to adopt the IBOC model, which would serve the public interest by allowing radio stations to transition to DAB without impairing the public's television broadcast service.

**II. THE PROPOSAL TO USE CHANNEL 6 FOR DAB WOULD BE DEVASTATING TO THE PUBLIC'S TELEVISION SERVICE.**

Channel 6 spectrum is presently used by 59 full-power NTSC broadcasters<sup>4</sup> and one full-power DTV broadcaster, as well as by more than 170 low power television ("LPTV") stations.<sup>5</sup> Combined, the full-service stations reach tens of millions of television households in the United States. This existing service should take priority over a new DAB service which can be effectively accommodated elsewhere.

**A. Channel 6 Spectrum, Like Other Low-Band VHF Frequencies, Has Unique Benefits For Television Service, And As The Commission Previously Recognized, It Should Be Retained For Television Use.**

It is beyond dispute that due to their unique propagation characteristics and their ability to overcome difficult terrain, manmade structures, and heavy foliage, the lower VHF channels, including Channel 6, are particularly well suited for television broadcast service. These channels offer wider, more complete coverage than UHF channels, their propagation characteristics are superior to UHF as they can more effectively overcome reception problems, and they operate more efficiently at lower power levels and with more economical transmitters. The result is

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<sup>4</sup> The *Notice* states: "There are 57 existing analog television stations on Channel 6." *Notice* ¶ 44. Joint Broadcasters' figure of 59 NTSC broadcasters includes two new analog Channel 6s: KBNY in Ely, Nevada, and KBCJ in Vernal, Utah.

<sup>5</sup> The Commission should be especially concerned about actions that might adversely impact LPTV stations in light of recent congressional action. On November 19, 1999, Congress passed the Community Broadcasters Protection Act of 1999. This legislation created a Class A license for qualified LPTV stations that affords them primary status as television broadcasters. If the Commission adopts the Channel 6 proposal, it would displace nearly 200 LPTV stations, some of whom may qualify for Class A status, certainly not something Congress intended when it passed legislation to protect LPTVs less than two months ago.

more extensive service to rural areas, to smaller towns located in fringe areas, and to closer-in populations whose service is limited or threatened by terrain, foliage, or blockage by buildings or other structures – service that should not be compromised. In addition to their beneficial propagation characteristics, low-band Vs are more economical and efficient than UHF channels. They are able to operate at one-fourth the annual cost of UHF stations, and their transmitting equipment can cost one-half as much. Channel 6, which is so effective in providing wide-area service in the existing NTSC environment, will be similarly effective in the DTV environment.

In its recently concluded digital television proceeding, the Commission considered excluding all the low-band VHF channels (channels 2-6) from the designated core channel group<sup>6</sup> but ultimately backed off from the proposal because of the wide area and efficient coverage of low-band Vs.<sup>7</sup> Channel 6 stations, like the other low-band Vs, are presently able to provide free, over-the-air broadcast service to viewers in areas well beyond UHF coverage areas. Accordingly, the Commission decided to retain the low-band Vs in the core because of their uniquely beneficial propagation and efficiency characteristics. In short, the Commission has already decided that the spectrum allocated to Channel 6, as part of the entire low-VHF band, is particularly well-suited to television broadcasting and, therefore, that it is in the public interest to retain Channel 6 in the core.

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<sup>6</sup> See *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Further Notice of Proposed Rule Making*, 11 FCC Rcd 10968, 10977-78 (1996). The core consists of those channels the Commission will retain after the mandatory give-back of stations' digital or analog channels.

<sup>7</sup> See *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418, 7435-37 (1998).

Somewhat over a year ago in the same DTV proceeding, the Commission specifically rejected a different proposal to deprive the public of Channel 6 television service because of the importance of “maintain[ing] the availability of channel 6 for television service.”<sup>8</sup> At issue was a separate proposal by the National Religious Broadcasters’ Association (“NRB”) to exclude Channel 6 from the core because of the potential for harmful interference to noncommercial FM radio stations operating near that band. After considering comments on both sides of the issue, the Commission rejected the NRB proposal, deciding that the most beneficial use of Channel 6 spectrum was for television service. Specifically, the Commission stated:

Channel 6 has advantageous propagation properties and has proven very desirable for television operation – as indicated by the fact that there are currently more than 55 NTSC television stations on this channel. *We believe it would be undesirable to remove channel 6 from the core spectrum or to impose additional restrictions on use of this channel for DTV service after the transition.*<sup>9</sup>

The Commission should not contravene its past reasoned policy determinations to retain Channel 6 in the core and should preserve Channel 6 for television use.

**B. Like All Other In Core Analog Licensees, Channel 6 Licensees Should Continue To Have The Option Of Returning To Channel 6 After The Transition.**

Existing Channel 6 licensees should continue to have the option of moving their DTV operations to Channel 6 after the transition. As the Commission observes in the *Notice*, there is presently only one DTV Channel 6 assignment, WBNE in New Haven, Connecticut.<sup>10</sup> However,

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<sup>8</sup> *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, 1374 (1998).

<sup>9</sup> *Id.* (emphasis added).

<sup>10</sup> See Comments of K-W TV, Inc. filed today in this proceeding.

when the Commission issued the DTV Table of Allotments, assigning existing broadcasters a paired channel to use for DTV service, it gave broadcasters the option of moving their DTV operations to their analog channels at the end of the DTV transition, provided their analog channels are in core.<sup>11</sup> Thus, although only one station has a Channel 6 DTV assignment, many, if not all, of the broadcasters assigned to analog Channel 6 may opt to move their digital service to Channel 6 and give back their other channel at the end of the transition. This is the step many low-band VHF analog licensees have indicated they will take. There are compelling policy reasons – grounded in the advantages of VHF wide-area and efficient coverage – why the Commission’s decision in this regard serves the public interest. Allocating Channel 6 for DAB instead would fly in the face of the Commission’s recent findings that allowing broadcasters to revert back to their low-band VHF channels after the transition serves the public interest.<sup>12</sup>

The Commission’s proposal would impact even more severely the 12 stations that presently broadcast their analog signal on Channel 6 and have digital allotments/assignments that are out of core (on channels 52-59) and the two stations broadcasting their analog signal on Channel 6 that have no digital allotment/assignment.<sup>13</sup> The stations with out of core DTV

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<sup>11</sup> See *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order*, 12 FCC Rcd 14588, 14628 (1997).

<sup>12</sup> Although the *Notice* observes that a station’s election to keep its analog channel after the transition is subject to Commission approval and that if the Commission used Channel 6 for DAB, it would not allow existing Channel 6 broadcasters to make this election, see *Notice* at n.93, it is in the public interest to allow broadcasters to give back their alternate channel for the reasons stated above.

<sup>13</sup> The stations with out of core DTV allotments/assignments are: KVIE in Sacramento, California; WKMG in Orlando, Florida; WCTV in Thomasville, Georgia; KWQC in Davenport, Iowa; WCML in Alpena, Michigan; WLNS in Lansing, Michigan; WABG in Greenwood, Mississippi; WECT in Wilmington, North Carolina; KSRE in Minot, North Dakota; KOTV in Tulsa, Oklahoma; WPVI in Philadelphia, Pennsylvania; and WIPR in San Juan, Puerto Rico. The stations with no DTV allotment/assignment are: KBNY in Ely Nevada, and KBCJ in Vernal, Utah.



channels would be required to give back their out of core spectrum at the end of the DTV transition, while the stations without digital assignments must transition to digital on-channel. If moving back to or transitioning to digital on Channel 6 is no longer an option for them, the Commission would be required to find them alternative channels elsewhere – channels that could be suboptimal because of interference and other constraints.

### **III. IBOC IS THE MOST APPROPRIATE, LEAST DISRUPTIVE, MODEL FOR DAB.**

IBOC, which gives each existing radio broadcaster a sliver of adjacent spectrum in which to initiate its DAB service, would permit the ongoing implementation of DAB service while at the same time allowing radio broadcasters to remain on the same channel. This ensures that no station would be shut out of the digital era, because IBOC could easily accommodate DAB within existing radio broadcast spectrum, thereby obviating the need for the Commission to allocate new spectrum for it.

#### **A. Channel 6 Spectrum Cannot Accommodate Existing Radio Broadcast Stations.**

The Commission would need between 57 and 64 MHz of new spectrum to accommodate the more than 12,500 existing radio broadcast stations in the United States;<sup>14</sup> however, the new spectrum proposal would provide only six MHz of spectrum for DAB use, far less than what is needed to accommodate all existing radio broadcasters. Thus, the out-of-band proposal would

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<sup>14</sup> This figure is based on a 1991 study conducted by Jules Cohen & Associates and Datel Corporation that analyzed the amount of spectrum that would be needed to accommodate DAB service for all AM and FM radio stations. The study concluded that it would take 64 MHz of spectrum to accommodate DAB operations for all existing AM and FM stations if each station were given a uniform coverage area. If DAB facilities were divided into three classes, with each class receiving a different sized coverage area, 57 MHz of spectrum would be needed. See *Digital Audio Broadcasting Spectrum Study, Final Report to NAB*, at 4 (Jan. 14, 1991) (submitted in GEN Docket No. 90-357).

create a winner/loser situation in which many existing radio broadcasters would be deprived of the opportunity to transition to digital. As a consequence, the practical problems the Commission would confront include deciding which existing broadcasters would receive spectrum in the new band and what would happen to the broadcasters who could not be accommodated there. Most existing radio broadcasters would not be able to transition to DAB under the *Notice*'s new spectrum proposal.<sup>15</sup>

**B. Channel 6 Spectrum Will Not Be Available Until 2007.**

One of the Commission's priorities in implementing DAB is "to foster a rapid and non-disruptive transition to DAB for broadcasters and listeners."<sup>16</sup> A primary concern with the Commission's Channel 6 proposal is that spectrum in the vast majority<sup>17</sup> of the United States would not be available for DAB until after the transition to DTV is completed and television stations give back their second channels, even though transmitting equipment for DAB should be available well before that time.<sup>18</sup> As the *Notice* explains, "a channel 6 allocation could significantly delay the introduction of DAB. The earliest this spectrum will be available in many

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<sup>15</sup> *See id.*

<sup>16</sup> *Notice* ¶ 18.

<sup>17</sup> MSTV asked TechWare, Inc. to show on a map of the United States where Channel 6 spectrum would be available for DAB before the DTV transition is completed, using a radius of 120 miles for full-service Channel 6 stations and 25 miles for low power Channel 6 stations to account for interference. *See* Attachment A. 120 miles and 25 miles are conservative estimates of the distances required to protect Channel 6 from DAB interference. As the map illustrates, there are few areas in the country where Channel 6 spectrum would be available for DAB before the DTV transition is completed.

<sup>18</sup> For example, USA Digital Radio, Inc. expects its preproduction systems for DAB to be operational beginning early this year and plans to have the capability to begin commercial service later in the year. *See Notice* ¶ 10. Thus, if the Commission adopted the IBOC approach, radio stations could begin transitioning to DAB immediately, rather than waiting at least seven years to make this service available to most Americans, ensuring a rapid transition to DAB. (continued...)

areas is 2007. However, the exact date of spectrum availability, which is tied to the end of the DTV transition period, could be significantly later.”<sup>19</sup> Congress realized the DTV transition could extend beyond January 1, 2007, and in the Balanced Budget Act of 1997, it provided for market-by-market extensions of the transition deadline in various circumstances.<sup>20</sup> It is unclear when the benchmarks set forth in the Act will be satisfied, but it can be anticipated with a high degree of certainty that it will not be in 2006 or any time soon thereafter. Channel 6 could not be vacated in most of the country for an extended and indefinite period of time.<sup>21</sup>

In the meantime, if the Commission adopts the Channel 6 proposal, it would be limited to a “swiss cheese” approach to DAB implementation until all television broadcasters vacate the spectrum. In other words, the Commission would be required to dole out DAB allotments piecemeal, *i.e.*, only in those areas outside the 120 mile radii from Channel 6 stations needed to protect the public’s existing television service from new DAB stations. This two stage approach would exacerbate the practical problems described above in deciding which radio broadcasters would be accommodated first and which must languish until the DTV transition is completed. Given that only a small percentage of existing radio broadcasters could be accommodated in the entire six MHz of Channel 6 spectrum and that the great majority of this spectrum would not be

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<sup>19</sup> Notice ¶ 41.

<sup>20</sup> See Balanced Budget Act of 1997, Pub. L. No. 105-33, § 3003, 11 Stat. 251 (1997) (codified at 47 U.S.C. § 309 (j)(14)(B)). The transition deadline can be extended if one network-affiliated station in the market is not broadcasting a DTV signal after exercising due diligence, if digital-to-analog converter technology is not generally available in the market, or if at least 15% of television households in the market cannot receive digital signals because they do not subscribe to an MVPD that carries DTV programming and they do not have a digital receiver.

<sup>21</sup> Today, two years after the standard was set, there are only 100,000 digital television sets in the market, and there are stalemates over must carry, cable compatibility standards, and set top (continued...)

available until after the DTV transition, the number of radio broadcasters to whom the Commission would be able to grant DAB assignments before 2007 is negligible. The perils and delays of the digital transition suggest that the new spectrum proposal would be an extremely slow, uncertain, and incomplete option for implementing DAB.

**IV. ADOPTING BOTH IBOC AND THE CHANNEL 6 PROPOSAL WOULD BE THE WORST OF ALL POSSIBLE WORLDS.**

The *Notice* observes “that the IBOC and new-spectrum DAB options need not be mutually exclusive and, in fact, could be complementary.”<sup>22</sup> This proposal is not a viable option for similar reasons to those that make the new spectrum proposal unworkable. If the Commission adopts both the IBOC and new spectrum proposals, it would generate all the same costs of eliminating Channel 6 for television use discussed above with no significant added benefits. Because all existing radio broadcasters could be accommodated by IBOC but not by the new spectrum proposal, the only reason to adopt both options would be to use Channel 6 spectrum to add new radio stations. However, there is not the slightest indication that adding to the over 12,500 existing radio broadcast stations is either necessary or desirable, especially compared with the inevitable and unacceptable injury to the public’s Channel 6 television service that would result.<sup>23</sup> For these reasons, Joint Broadcasters also urge the Commission not to adopt the new spectrum proposal in tandem with the IBOC proposal.

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boxes, in addition to serious consumer dissatisfaction with first generation multipath performance.

<sup>22</sup> *Notice* ¶ 41.

<sup>23</sup> Nor is increasing the number of radio broadcast stations a goal articulated in the *Notice*.

## **V. CONCLUSION**

The *Notice* unfairly targets stations with a strong and prolonged history of public service, creating destructive uncertainty for the 60 commercial and noncommercial television broadcasters with analog or digital Channel 6s, while at the same time offering no benefits over the IBOC proposal, which would accommodate all existing radio broadcasters without disrupting either radio or television service. The doubts these stations face could interfere with the transition to DTV and impede investments during the rollout period and dampen enthusiasm for full and vigorous DTV implementation. Joint Broadcasters encourage the Commission to retain Channel 6 television broadcast spectrum for free, over-the-air television broadcast service and to accommodate DAB within existing radio spectrum.

Respectfully submitted,

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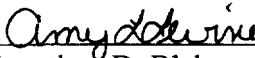
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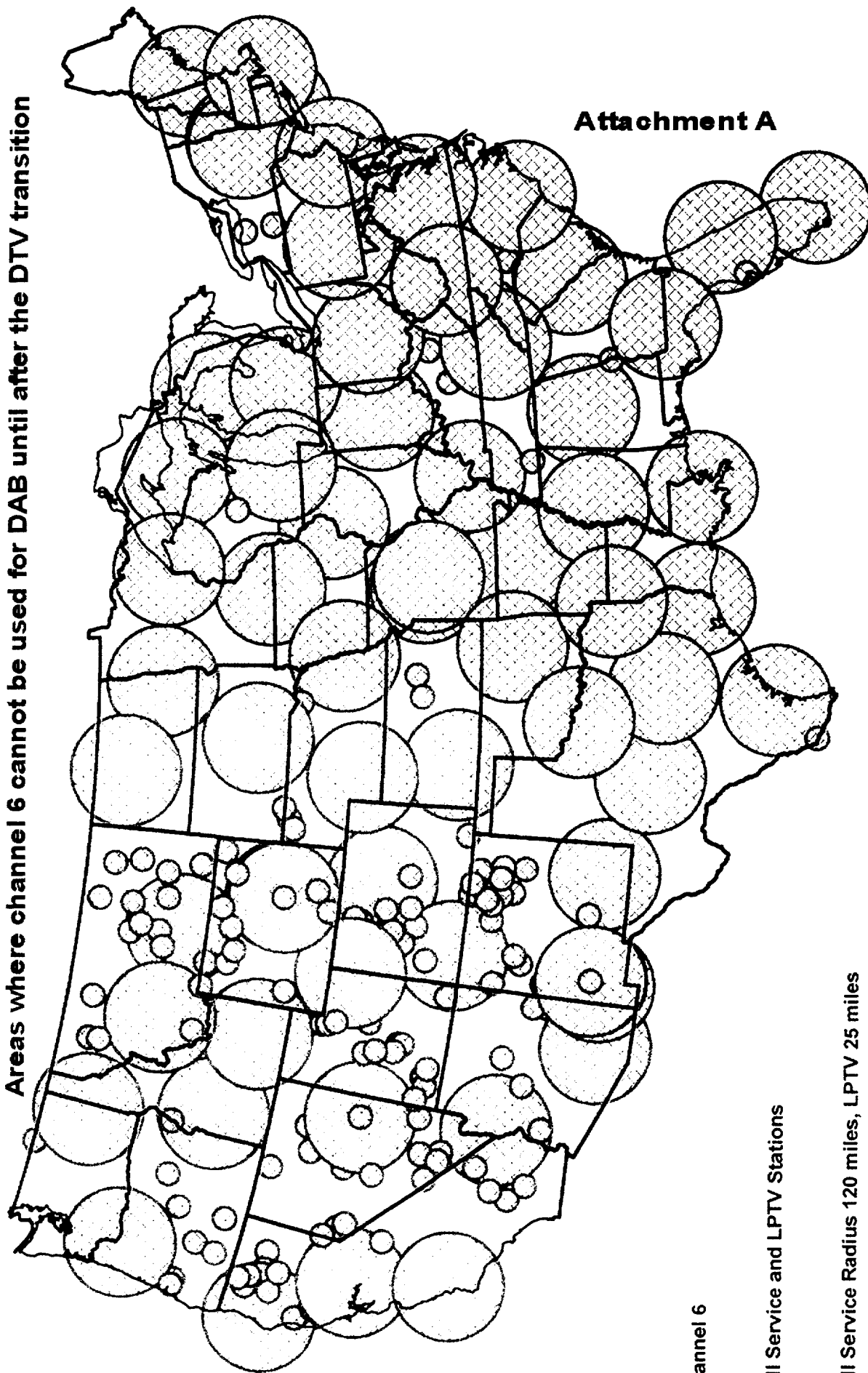
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January 24, 2000

Areas where channel 6 cannot be used for DAB until after the DTV transition

## Attachment A



Channel 6

Full Service and LPTV Stations

Full Service Radius 120 miles, LPTV 25 miles